

Kristian Karl Larsen, Esq.
LEE & KELLEY, LLP
264 West 40th Street, 18th Floor
New York, New York 10022
(212) 710-0006

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VIAONE TECHNOLOGIES, INC.
Plaintiff,

06 Civ 12983 (RCC)

-against-

MR. PREPAID, INC., and
DANIEL D. ELY

Defendants.

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**MEMORANDUM OF LAW IN RESPONSE TO DEFENDANTS'
MOTION TO STAY PROCEEDINGS AND COMPEL ARBITRATION**

Plaintiff Qualifiedly Consents to Defendants' Motion

Plaintiff, VIAONE TECHNOLOGIES, INC. (“VIAONE”), by counsel, respectively submits this response to Defendants’ Motion to Stay Proceedings and Compel Arbitration. Plaintiff has filed a demand for arbitration and qualifiedly consents to Defendants’ Motion to Stay Proceedings and Compel Arbitration subject to the condition that the arbitration proceeding take place within the jurisdiction of the District Court for the Southern District of New York at the New York City locale designated in Plaintiff’s Demand for Arbitration, attached hereto as Exhibit 1.

As discussed below, in addition to the arbitration clause cited by Defendants in their memorandum, the Airtime Gateway Agreement (the “Agreement”) also contains a consent to jurisdiction clause, (the “Jurisdiction Clause”), which provides that “all actions or proceedings must be exclusively brought in the United States District Court for the Southern District of New York, or, if such court lacks subject matter jurisdiction, in the Supreme Court for the State of New York.” In addition, the Jurisdiction Clause provides that “[e]ach party hereto expressly waives the right to object to the exclusive jurisdiction of either venue of such court or that such court is an inconvenient forum.” *See* Agreement at paragraph 20 attached as Exhibit B to Defendants’ Motion to Stay Proceedings and Compel Arbitration.

Because: (a) any award ultimately obtained through arbitration would need to be confirmed within a court having jurisdiction, (b) the Jurisdiction Clause designates the Southern District of New York or the Supreme Court for the State of New York as having such jurisdiction, and (c) Defendants seek and Plaintiff consents to stay of the instant action and the Court would thus retain jurisdiction of the action pending arbitration, the arbitration should take place at the New York City locale designated in Plaintiff’s Demand for Arbitration. In addition, a review of the factors reviewed

by the American Arbitration Association in determining the locale of the arbitration militate in favor of a New York City locale

The location of plaintiff and its attorney's, witnesses and business records with respect to the underlying controversy are in New York City; (2) New York City is the place of the execution and substantial performance of the contract; (3) the instant action has been commenced in this Court and should the action be stayed pending arbitration this court will retain jurisdiction over all non-arbitrable issues therein. *See* the American Arbitration Association Guidelines for Locale Determinations attached hereto as Exhibit 2.

Wherefore, because Plaintiff, by counsel consents to Defendants' Motion to Stay Proceedings and Compel Arbitration, its is respectfully requested that the Court issue an order staying the instant action and compelling arbitration at the American Arbitration Association New York City locale designated in Plaintiff's Demand for Arbitration.

Dated: New York, New York
December 22, 2006

LEE & KELLEY, LLP

/s/
Kristian Karl Larsen (KL7352)
264 West 40th Street
18th Floor
New York, New York 10022
(212) 710-0006
Attorneys for Plaintiff